

STATE WATER CONTROL BOARD
NOTICE OF INTENT TO PROVIDE SECTION 401 WATER QUALITY CERTIFICATION
OF UNITED STATES ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS AND
NORFOLK DISTRICT REGIONAL CONDITIONS.

Pursuant to Virginia Water Protection Permit Regulation 9 VAC 25-210-130H, the State Water Control Board (Board) is giving notice of its intent to provide Section 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions, after considering public comment for a 30-day period starting March 16, 2007. These NWPs were published in Part II of the *Federal Register* on March 12, 2007, with an effective date of March 19, 2007. The Norfolk District Regional Conditions were public noticed on October 13, 2006. The Board can only issue final Section 401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification.

The State Water Control Board will issue its final §401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions at the end of the 30 day comment period and after any comments received are considered. The details of the Board's preliminary decision are also available on the Department of Environmental Quality web site at <http://www.deq.virginia.gov> or by calling or emailing the contact person noted below. Written comments, including those by email, must be received no later than 4:00 p.m. on April 16, 2007 and should be submitted to the contact person at the address given below. Only those comments received within this period will be considered by the Board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. **CONTACT PERSON:** David L. Davis, Director of the Office of Wetlands and Water Protection, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240, Phone (804) 698-4105, Fax (804) 698-4347, or E-mail dldavis@deq.virginia.gov.

The Department of Environmental Quality is also soliciting public comments on the consistency of the issuance of the Nationwide Permits with Virginia's Coastal Resources Management Program (VCP) pursuant to the federal Coastal Zone Management Act of 1972, as amended. Water Quality Certification pursuant to Section 401 of the federal Clean Water Act is one of the Enforceable Programs of the VCP. The deadline for public comments on the Coastal Zone consistency notice is April 23, 2007. For more information, contact Charles Ellis at (804) 698-4488, e-mail address: chellis@deq.virginia.gov.

Proposed Commonwealth of Virginia Section 401 Consistency Determination for Nationwide Permits Reissued on March 12, 2007

The State Water Control Board proposes to provide unconditional §401 Water Quality Certification for all of the Norfolk District Regional Conditions and for the following Nationwide Permits, as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification:

- NWP 1: *Aids to Navigation*
- NWP 2: *Structures in Artificial Canals*
- NWP 3: *Maintenance*
- NWP 4: *Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities*
- NWP 5: *Scientific Measurement Devices*
- NWP 6: *Survey Activities*
- NWP 8: *Oil and Gas Structures*
- NWP 9: *Structures in Fleeting and Anchorage Areas*
- NWP 10: *Mooring Buoys*
- NWP 11: *Temporary Recreational Structures*
- NWP 13: *Bank Stabilization*
- NWP 15: *U.S. Coast Guard Approved Bridges*
- NWP 20: *Oil Spill Cleanup*
- NWP 21: *Surface Coal Mining Activities*
- NWP 22: *Removal of Vessels*
- NWP 23: *Approved Categorical Exclusions*
- NWP 28: *Modifications of Existing Marinas*
- NWP 30: *Moist Soil Management for Wildlife*
- NWP 31: *Maintenance of Existing Flood Control Facilities*
- NWP 33: *Temporary Construction, Access and Dewatering*
- NWP 34: *Cranberry Production Activities*
- NWP 35: *Maintenance Dredging of Existing Basins*
- NWP 36: *Boat Ramps*
- NWP 37: *Emergency Watershed Protection and Rehabilitation*
- NWP 38: *Cleanup of Hazardous and Toxic Waste*
- NWP 41: *Reshaping Drainage Ditches*
- NWP 45: *Repair of Uplands Damaged by Discrete Events*
- NWP 46: *Discharges Into Ditches*
- NWP 47: *Pipeline Safety Program Designated Time Sensitive Inspections & Repairs*
- NWP 49: *Coal Re-mining Activities*
- NWP 50: *Underground Coal Mining Activities*

Unless otherwise part of the Norfolk District State Program General Permit SPGP-01, the State Water Control Board proposes to provide §401 Water Quality Certification for the following Nationwide Permits as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:5.E:

NWP 14: *Linear Transportation Projects* (note that the nontidal portion of this Nationwide is currently suspended in the Commonwealth and is covered under the SPGP-01)

NWP 39: *Commercial and Institutional Developments* (note that this Nationwide is currently suspended in the Commonwealth and is covered under the SPGP-01)

NWP 29: *Residential Developments* (note that activities covered under this Nationwide are currently part of the SPGP-01 but this nationwide has not yet been suspended)

The State Water Control Board proposes to provide conditional §401 Water Quality Certification for the following Nationwide Permits provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:5E and as detailed below:

NWP 7: *Outfall Structures and Maintenance*, provided that the structure or maintenance are not associated with intake structures

NWP 12: *Utility Line Activities*, provided that the activities are not associated with intake structures or do not transport non-potable raw surface water

NWP 18: *Minor Discharges*, provided that the discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure

NWP 19: *Minor Dredging*, provided that dredging is not used to create a deep space for water withdrawal

NWP 25: *Structural Discharges*, provided that the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals

NWP 27: *Stream and Wetland Restoration Activities*, provided that : (1) when used to permit a wetland mitigation bank, compensation for any surface water impacts is debited from the bank credits.; (2) natural stream design shall be used for stream restoration projects; (3) monitoring for success of these sites shall be conducted including submittal of as-built plans, surveys, and photographs.

NWP 32: *Completed Enforcement Actions*, provided that the impact does exceed 2 acres of wetlands or 1500 linear feet of streambed and only past unauthorized impacts are addressed.

NWP 40: *Agricultural Activities*, except for the location of concentrated animal feeding operations or waste storage facilities in surface waters.

NWP 42: *Recreational Facilities*, provided that the facility does not include an impoundment for irrigation.

NWP 43: *Stormwater Management Facilities*, provided that the facility is not associated with a water withdrawal

NWP 44: *Mining Activities*, provided that the activity is not for hydraulic dredging

NWP 48: *Commercial Shellfish Aquaculture Activities*, provided that the activity complies with the conditions of any VPDES permit issued for the facility

The following Nationwide Permit is not currently applicable in the Commonwealth and therefore does not require §401 Certification:

NWP 24: *Indian Tribe or State Administered Section 404 Programs*

The State Water Control Board denies §401 Water Quality Certification for the following Nationwide Permits, as these types of projects require individual review under state laws:

NWP 16: *Return Water from Upland Contained Disposal Sites*

NWP 17: *Hydropower Projects*

As to the exceptions for activities that would otherwise qualify for one of these Nationwide Permits, the State will continue to process applications for individual §401 Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC 25-210-10 et seq. To accomplish our goal of individual review of certain activities, the Commonwealth is requesting that the Corps forward to the Department of Environmental Quality pre-construction notifications for any activities that fall into an excepted category.